

IN THE  
**United States**  
**Circuit Court of Appeals**  
**For the Ninth Circuit**

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NORTH SIDE CANAL COMPANY, LIM-  
ITED, a Corporation,

*Appellant,*

vs.

IDAHO FARMS COMPANY, a Corporation,

*Appellee.*

---

Appellant's Answer to Appellee's Petition  
for Rehearing

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*Upon Appeal from the District Court of the United States  
for the District of Idaho, Southern Division*

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WAYNE A. BARCLAY,  
Residence: Jerome, Idaho;

RICHARDS & HAGA,  
Residence: Boise, Idaho;

FRANK L. STEPHAN,

J. H. BLANDFORD,

Residence: Twin Falls, Idaho,

*Attorneys for Appellant, North Side  
Canal Company, Ltd., a Corporation.*

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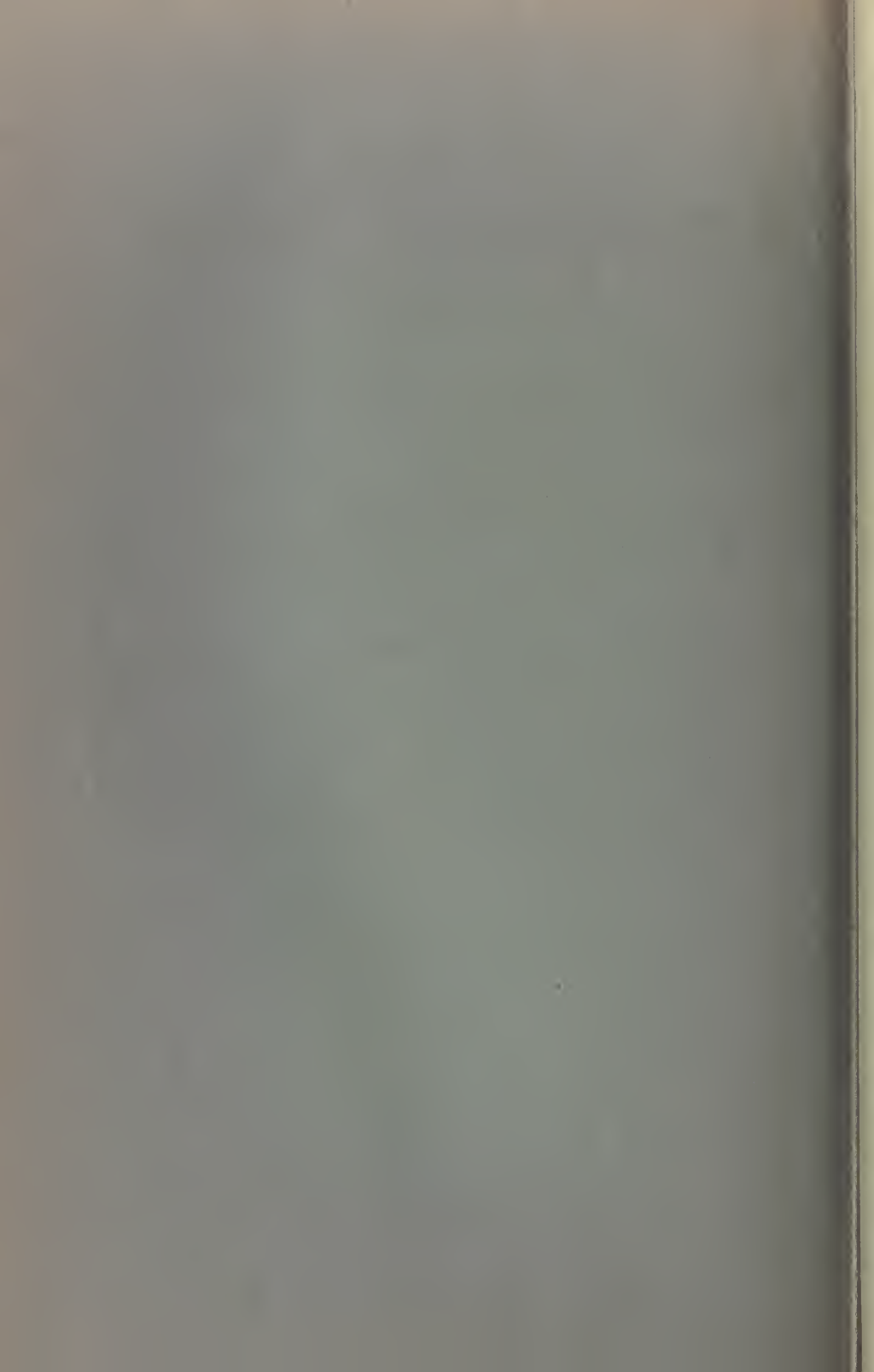
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NORTH SIDE CANAL COMPANY, LIM-  
ITED, a Corporation,

*Appellant,*

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IDAHO FARMS COMPANY, a Corporation,

*Appellee.*

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Appellant's Answer to Appellee's Petition  
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WAYNE A. BARCLAY,

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RICHARDS & HAGA,

Residence: Boise, Idaho;

FRANK L. STEPHAN,

J. H. BLANDFORD,

Residence: Twin Falls, Idaho,

*Attorneys for Appellant, North Side  
Canal Company, Ltd., a Corporation.*

## SUBJECT INDEX

	<i>Page</i>
Appellee's suit is to quiet its title against Appellant's statutory liens.....	3
Appellant's suits for foreclosing its liens were commenced in the proper State Courts and within the time required.....	3
The ruling of the District Court that Appellant's foreclosure suits should have been brought in that Court instead of in the State Courts was erroneous, for reasons stated, pp. 73-78 of Appellant's original brief.....	4
The question now raised by Appellee is simply collateral and incidental to main issue and no rehearing should be granted for further consideration thereof.....	4
The District Court should be directed to dismiss Appellee's suit, it was prematurely brought.....	4-5
Appellee may set up in its answers in the State Court cases the points now raised on its petition for rehearing, and the State Court is competent and qualified to construe the state statutes on which Appellee now relies.....	6

## STATUTES

	<i>Page</i>
Idaho Code Annotated:	
Sec. 5-808.....	6
Sec. 41-1903.....	6
Sec. 41-1905.....	6

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NORTH SIDE CANAL COMPANY, LIM-  
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Appellant's Answer to Appellee's Petition  
for Rehearing

---

Answering Appellee's Petition for Rehearing, Appellant says:

Because Appellee's action in the Federal Court was in the nature of an action to quiet title, Appellant was required to and did set up in its Answer to Appellee's Complaint the nature of its claims against the lands involved in the action. In paragraphs XI, XII and XIII of its First Affirmative Defense (R. 44-47), Appellant alleged that subsequent to the commencement of this case, it had commenced two actions in Jerome County and two actions in Gooding County to foreclose its maintenance liens for the years 1935 and 1936. The answer shows that these actions had been

commenced within the time and in the manner prescribed by the State statutes. During the course of the trial, Appellant offered testimony to prove that said actions had been timely commenced and indeed some of the testimony was received by the Court without objection from the Appellee, but Appellee thereafter moved to strike the evidence theretofore received and the motion to strike was granted (R. 217-218). The Court sustained the Motion to Strike on the ground that inasmuch as the actions to foreclose the 1935 and 1936 maintenance liens had not been commenced in the Federal Court, they had not been commenced "in a proper Court."

On pages 73-78 of Appellant's Brief we have set forth the reasons for contending that said actions were commenced in proper forums, and we believe it unnecessary to add to what was there said.

However, regarding Appellee's present request that a rehearing be granted or that without such rehearing the Court amplify its opinion and decide whether said actions were commenced in "proper courts," we submit:

1. That said question was collateral and merely incidental to the main issue involved in the suit and its determination was not necessary for a determination of the main issue decided by this Court in the opinion filed on November 22, 1939.

2. Appellee's suit was to quiet its title to the Carey Act lands which it had reacquired; it contended that Appellant could not, under the Idaho statutes, levy any assessment or have any lien thereon for maintenance and operating expenses,

and that Appellant's claim of lien was unfounded. Appellee's suit was commenced on November 24, 1937 (R. 30), or more than thirty days before Appellant was, under the State law, required to commence its action for the foreclosure of its lien for assessments levied in 1935. *Appellee's rights must be determined as of the time it commenced its action.* This Court has held that Appellant was entitled, under the Idaho statutes, to a lien on Appellee's lands, hence even if Appellant had filed no action to foreclose its lien for the 1935 assessment, Appellee could not prevail in this action, for its suit would in any event *be premature*, being filed before appellant was required to commence its suit to foreclose its lien for the 1935 assessment.

3. The Court, having determined the controlling question in the case, should not grant a rehearing for the purpose of considering the rulings of the Trial Court on evidence touching incidental issues that would not change the decision of the Court heretofore rendered.

4. Appellee may, in the foreclosure suits pending in the State Courts, plead the statute of limitations against the commencement of the actions for foreclosing the lien for the 1935 assessments, if it believes that the commencement of such suits in the State Court in December, 1937, was a nullity because of the pendency of Appellee's suit in the Federal Court. We submit that Appellee's point is one which it should set up in its actions in the State Court. That Court is

fully competent and is a proper tribunal to pass on the question as to whether Appellant's foreclosure suits were filed within the time and in the tribunal required by the state statutes. Appellee is not without relief if this Court directs a dismissal of the present action in the Federal Court.

5. If Appellant's actions to foreclose were not commenced in the proper Court, then Appellant's liens for 1935 and 1936 assessments have expired by lapse of time under the provisions of Section 41-1905, Idaho Code Annotated, which requires that such actions be commenced within two years after the filing of the statement mentioned in Section 41-1903. Section 5-808, Idaho Code Annotated, requires that the statute of limitations must be specially pleaded and, accordingly, Appellee's defense must be set out in its answers in the actions pending in the State Court. Section 5-808 provides as follows:

“Pleading statute of limitations.—In pleading the statute of limitations it is not necessary to state the facts showing the defense, but it may be stated generally that the cause of action is barred by the provision of section —— (giving the number of the section and subdivision thereof, if it is so divided, relied upon) of the Code of Civil Procedure; and if such allegation be controverted, the party pleading must establish on the trial the facts showing that the cause of action is so barred.”



WHEREFORE, We respectfully submit that a rehearing should not be granted and that this Court need not amplify its opinion except perhaps to direct that Appellee's suit to quiet title should be dismissed, because that action was founded upon the erroneous contention that Appellant was not, under the Idaho Statutes, entitled to a lien on Appellee's Carey Act lands.

Respectfully submitted,

WAYNE A. BARCLAY,

Residence: Jerome, Idaho.

RICHARDS & HAGA,

Residence: Boise, Idaho;

FRANK L. STEPHAN,

J. H. BLANDFORD,

Residence: Twin Falls, Idaho,

*Attorneys for Appellant, North Side  
Canal Company, Limited.*

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